

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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KIMBERLY COLE, ALAN COLE,  
JAMES MONICA, LINDA BOYD,  
MICHAEL MCMAHON, RAY  
SMINKEY, JAMES MEDDERS, JUDY  
MEDDERS, ROBERT PEPERNO,  
SARAH PEPERNO, and KELLY  
MCCOY, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

NIBCO, Inc.,

Defendant.

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: Civil Action No.: 13-cv-7871(FLW)(TJB)  
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: **[PROPOSED] ORDER GRANTING, IN PART,**  
: **DEFENDANT’S MOTION**  
: **FOR PARTIAL SUMMARY JUDGMENT**

**THIS MATTER**, having been opened to the Court by Defendant NIBCO INC.  
(“NIBCO”) by way of a Notice of Motion for Summary Judgment pursuant to Rule 56 of the  
Federal Rules of Civil Procedure and L. Civ. R. 7.1 and 56.1, and the Court having reviewed the  
papers in support thereof and those submitted in opposition thereto,

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_ 2017,

**HEREBY ORDERED** that NIBCO’s Motion for Summary Judgment (Doc. 118) is  
**DENIED**, in part, with respect to the following claims:

- 1) Plaintiff Kelly McCoy’s claims for breach of implied warranty as to NIBCO’s 1006 PEX Tubing product (hereinafter “Tubing”) and yellow brass PEX Fittings (hereinafter “Fittings”), strict liability for Tubing premised on a design defect and failure to warn, and negligence for Tubing premised on negligent formulation and design;
- 2) Plaintiff Ray Sminkey’s claims for breach of express warranty as to Tubing, strict liability for Tubing premised on a design defect, and negligence for Tubing premised on negligent formulation, testing and design;

- 3) Plaintiff Linda Boyd's claims for breach of express warranty as to Tubing, her AEMLD claim for Tubing premised on a failure to warn, and negligence for Tubing premised on negligent formulation, testing, and design;
- 4) Plaintiffs Kimberly and Alan Coles' TPLA claim premised on a failure to warn (NIBCO has not moved for summary judgment on the Coles' TPLA design defect claim);
- 5) Plaintiff James Monica's claims for breach of express warranty as to Tubing and Fittings and his NJPLA claim for Fittings based on a design defect and failure to warn;
- 6) Plaintiffs Robert and Sarah Peperno's claims for breach of express warranty as to Tubing and Fittings, breach of implied warranty as to Tubing and Fittings, strict liability for Tubing and Fittings premised on a design defect and failure to warn, and negligence for Tubing and Fittings premised on negligent formulation, testing, and design;
- 7) Plaintiff Michael McMahon's claims for breach of express warranty as to Tubing and Fittings, breach of implied warranty as to Tubing and Fittings, and negligence for Tubing premised on negligent formulation, testing, and design; and
- 8) Plaintiffs James and Judy Medders' claims for breach of express warranty as to Tubing and Fittings, breach of implied warranty as to Tubing and Fittings, and negligence for Fittings premised on negligent formulation, testing and design.

**IT IS FURTHER ORDERED** that NIBCO's Motion for Summary Judgment is **GRANTED**

with respect to all other remaining claims.

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Honorable Freda L. Wolfson, U.S.D.J.  
United States District Court Judge